No. 89-1192

In The

Supreme Court of the United States

October Term, 1989

JULIUS GLINSEY, JR.,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For A Writ Of Certiorari To The Appellate Court of Illinois, Fourth Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Whether a post-arrest search of an individual violates the Fourth Amendment where that individual voluntarily approaches police officers conducting an investigation and, in response to questions posed by the police officers, the individual voluntarily gives answers which establish probable cause for his arrest.

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RESPONDENT'S BRIEF IN OPPOSITION

JURISDICTIONAL STATEMENT

The jurisdictional requisites are adequately set forth in the petition. However, as treated more fully by the argument contained herein, respondent does not believe petitioner has shown any reason for this Court to exercise its sound judicial discretion to grant the writ.

STATEMENT OF THE CASE

The record indicates that Officer Morrell was sent to the Sears Automotive Department in Decatur, Illinois, on

February 1, 1988. When he arrived, he was directed to an Oldsmobile passenger car with the trunk open, revealing a 12-gauge shotgun with ammunition inside. (R. Vol. III, 13). These items had been discovered by an employee of Sears and the officer called in response thereto. The officer ran a license plate check on the vehicle which indicated the vehicle was registered to petitioner. (R. Vol. III, 14). An investigation was also made by the officer as to whether petitioner possessed a Firearm Owner's Identification Card and the officer was informed that petitioner did not. (R. Vol. III, 18).

The officer then waited for the Oldsmobile to be picked up and when it was, he stopped the vehicle several blocks later and identified the occupant as Larry Savage. (R. Vol. III, 15). At the same time the Oldsmobile pulled over a Buick passenger car also pulled over, from which petitioner emerged. Petitioner then approached the officers and was questioned as to whether he was the owner of the Oldsmobile passenger car and petitioner stated that he was. (R. Vol. III, 18). Petitioner was also asked whether he was the owner of the contents therein and petitioner admitted that he was. (R. Vol. III, 18). Petitioner was then placed under arrest. (R. Vol. III, 18).

Subsequent to his arrest, petitioner was searched and a .38 caliber revolver was discovered in his left coat pocket. (R. Vol. III, 19). Petitioner's Buick passenger automobile was then searched and a green backpack was discovered in the rear seat which contained a 9 mm. Llama automatic and a plastic bag containing a white, powdery substance. (R. Vol. III, 19-20). After petitioner

was transported to the Decatur police department, another bag containing a white, powdery substance was discovered in the backseat of the police squad car. (R. Vol. III, 23, 24). Petitioner was again searched at the police station and a small plastic bag containing a white, powdery substance was removed from his right coat pocket. (R. Vol. III, 24).

Prior to trial, petitioner filed a motion to quash the arrest and suppress the evidence. The motion was denied and the evidence was introduced into evidence against petitioner at his trial. The denial of the motion to quash the arrest and suppress the evidence was affirmed on appeal.

REASONS FOR DENYING THE WRIT

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE A POST-ARREST SEARCH OF AN INDIVIDUAL DOES NOT VIOLATE THE FOURTH AMENDMENT WHERE THAT INDIVIDUAL VOLUNTARILY APPROACHES POLICE OFFICERS CONDUCTING AN INVESTIGATION AND, IN RESPONSE TO QUESTIONS POSED BY THE POLICE OFFICERS, THE INDIVIDUAL VOLUNTARILY GIVES ANSWERS WHICH ESTABLISH PROBABLE CAUSE FOR HIS ARREST.

Petitioner alleges that he was stopped and searched under circumstances which did not satisfy this Court's decisions in *Terry v. Ohio*, 392 U.S. 1 (1968); *Sibron v. New York*, 392 U.S. 40 (1968) and *Ybarra v. Illinois*, 444 U.S. 85 (1979). On the strength of these cases petitioner states: "Before a police officer may seize and search a person, the officer must be able to point to particular facts from

which he reasonably inferred that the person is armed and dangerous." Pet., p. 6. While such a statement may be true in some circumstances, on the facts of this case petitioner's reliance on *Terry, Sibron* and *Ybarra* is completely misplaced. This case did not involve a protective pat down of an individual when the officer had no cause to arrest (*Terry*). This case did not involve a search of an individual subsequent to a warrantless arrest where the police lacked probable cause to arrest (*Sibron*). This case did not involve a non-protective warrantless search of an individual in conjunction with the execution of a premises search warrant (*Ybarra*).

The facts of this case reveal that the search of petitioner was conducted subsequent to a custodial arrest and that the arrest was based upon probable cause. Prior to stopping the automobile driven by Savage the police knew that the automobile belonged to petitioner, that the automobile contained a firearm and ammunition and that petitioner did not possess a Firearm Owner's Identification Card.[1] After the police stopped the automobile driven by Savage, petitioner stopped at the scene in the automobile he was driving, approached the police, identified himself and answered questions posed to him by the police. Thus, the police did not conduct a *Terry* stop. The police did not stop petitioner at all. Petitioner's stopping at the scene was, if not intelligent, certainly voluntary. In

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[1] Section 83-2(a) of the Illinois Criminal Code states: "No person may acquire or possess any firearm or any firearm ammunition in this State without having in his possession a Firearm Owner's Identification Card previously issued in his name by the Department of State Police under the provisions of this Act." Ill. Rev. Stat., ch. 38, par. 83-2(a).

response to the officer's questions, petitioner established his identity and admitted he owned the automobile being driven by Savage as well as its contents. These admissions placed petitioner in possession of a firearm in violation of the Illinois Criminal Code. Therefore, the police had probable cause to arrest petitioner and the search about which petitioner complains was conducted subsequent to this custodial arrest.

A search of an individual pursuant to a full custodial arrest based upon probable cause is permitted under the Fourth Amendment to the United States Constitution. *United States v. Robinson*, 414 U.S. 218 (1973). While it is unclear whether petitioner is challenging the search of the automobile he was driving when arrested as well as the search of his person, it is clear that the search of the automobile subsequent to petitioner's custodial arrest was permissible. *New York v. Belton*, 453 U.S. 454 (1981).

The petition for writ of certiorari filed in this cause does not present this Court with a search which violated the Constitution, with a point of law which is in dispute among the various lower Federal and State courts or with an otherwise unresolved question of law. The arrest and subsequent search of petitioner were permissible under the Fourth Amendment and the writ should be denied.

CONCLUSION

For all of the foregoing reasons, respondent respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari filed in this cause.

Respectfully submitted,

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